

MEMORANDUM FOR: Deputy Director (Support)

ATTENTION: Mr. H. Gates Lloyd

SUBJECT: Over-obligation of Allotment and Program
Approvals by TSS for CPFF Contracts

REFERENCES: (a) Memo for TSS to DD/P, Subj: Use of
Lapsed Funds by TSS for CPFF Contracts,
dtd. 27 Apr 59
(b) Memo for DD/P to Acting DD/s, Subj: Use
of Lapsed Funds by TSS for CPFF Contracts,
dtd. 26 Apr 59

1. This memorandum is in response to your inquiry concerning the over-obligation by TSS of its allocations and allotments for Research and Development, and TSS's proposal to continue the procedures which caused the over-obligation. It is understood that the Office of the General Counsel and the Audit Staff are preparing memoranda on the same subject. While we have tried to reference all issues and problems, some points have been kept brief on the assumption that this will be discussed in more detail by the Office of the General Counsel and the Audit Staff in their memoranda. Pertinent parts of this memorandum were discussed in draft with members of the Office of the General Counsel, the Office of Logistics, and the Audit Staff. A schedule of approvals, allocations, allotments, and obligations is appended as Attachment No. 1.

2. Background: Various problems in connection with the administration of Research and Development contracts have arisen for discussion over a period of at least five years. Problems of particular interest to the Budget Division concerned the legality of charging subsequent upward contract revisions to the year of the original contract, and the problem of holding total obligations to the approved and allotted amounts. In earlier years, these problems concerned several offices. The Office of Communications and other offices now have established reasonably satisfactory controls and more recently the problems have concerned TSS Research and Development work almost entirely.

A policy statement from the Office of the Comptroller, dated 18 October 1957, Attachment No. 2, clarified the question of the

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appropriate fiscal year charge on contract revisions; and the present TSS and DD/P memoranda result from a series of discussions between the Budget Division and TSS following the close of Fiscal Years 1957 and 1958 directed solely to the question of the incurring of obligations by TSS in excess of the allotment and PRC approval limitations. TSS did not exceed either its allotment or PRC authority in Fiscal Year 1956. However, in Fiscal Year 1957 TSS exceeded its allotment authority and in Fiscal Year 1958, TSS exceeded both its allotment and PRC authority.

In June, Fiscal Year 1958, the PRC took formal recognition of the uncontrolled state of the administration of TSS's Research and Development Program and noted in paragraph 4b(3) of PRC action number DD/P-177-50 (Attachment No. 3) that "The Committee is prepared to endorse such a program ... provided there is included an effective system ... designed to operate within the designated monetary ceiling."

In September and October of 1958, when it became clear that TSS had exceeded both the allotment and PRC authorities for Fiscal Year 1958, the Budget Division requested TSS to establish procedures which would preclude further excess obligations. At the time we noted our continuing recognition of the difficulty of administering Research and Development Contracts, but stated to TSS that we believed TSS now had sufficient experience to establish and enforce standard controls applied throughout this Agency and the Government generally. TSS administrative personnel initially concurred informally, and we were advised that steps were being taken to limit total obligations. However, in the spring of 1959, after further study, TSS formally demurred. The two memoranda in question document the demurral.

3. Questions To Be Considered: In its memorandum, TSS minimizes what we think are serious legal and Agency policy questions. TSS does not plead that controls cannot be administered but rather it bases its argument for authority to disregard normal Agency administrative control policies on the fact that funds are in fact available within the DD/P, which funds will be lost if not used by TSS. Each of the several points in question is discussed below:

a. Legal Implications - Over-obligations: In order to avoid over-obligation of appropriations, Congress has established, by law, a series of administrative procedural requirements and penalties. To some extent the precise nature of the procedures to be followed rests with the Agency. In this Agency we administratively apportion the appropriation by allotments. These allotments are the only means in this Agency by which authority to incur obligations is granted. The Agency regulations (quoted in part on each allotment advice - Attachment No. 4) place responsibility for controlling these obligations on the allottee.

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c. Availability of Funds: It is true that in recent years unobligated funds have been available after the close of the year. However, each year the Agency obligates a very high percentage of its appropriation. (In Fiscal Year 1956, admittedly an unusual year, the obligation rate was 99.9%.) As our funds become more limited, and as our obligation estimating techniques become more refined, the total obligations will continue to approach 100%.

Each allottee has the legal right to obligate 100% of its funds and should they do so, there of course would be no "surplus" for TSS. If it is desired to hold back funds for use by TSS, the only legal way to do so is by the transfer of funds from other offices to TSS before the close of the year. This in turn can only be done on the basis of the approved program level.

In addition to its technical illegality, a planned program of adjustments after the close of the year could subject us to severe criticisms from the Bureau of the Budget and, perhaps equally as important, also could establish an unfortunate Agency precedent. The Office of Communications, the Office of Logistics, the Development Projects Division, and such smaller offices as the Office of Scientific Intelligence and the Photographic Intelligence Center, with equally valid justification could request funds after the close of the year for cost-plus-fixed-fee contracts; and, by similar reasoning, the area divisions of the DD/P could request funds for field construction overruns, errors in estimates for field travel, and for agent bonuses and contingency fees. Nearly every CIA office has some indefinite or contingent obligations, the exact total of which cannot be determined until after the close of the year. Sound funds management requires that each office plan for its own possible overruns.

TSS has consistently revised contract obligations upward for a period of two or more years, and one instance has been brought to our attention where a Fiscal Year 1953 obligation was amended in Fiscal Year 1959 - six years after the original contract obligation. In view of TSS's contract procedures, there appears to be no limit to TSS's potential requests for funds, and unless more adequate procedures are established there can be no assurance that funds can be made available to TSS.

d. "Loss" of Funds: Contrary to the implication in the TSS and DD/P memoranda, funds remaining unobligated are not lost to the Agency. These are returned to the Agency Reserve and are available for release to meet future year requirements.

4. Summary: TSS's practices are illegal, are contrary to existing regulation and policy, and constitute a precedent which if followed

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generally could cause the Agency to exceed its appropriations. These violations and risks save no funds for the Agency since any balances would be carried forward into the Reserve for Contingencies for use to meet unanticipated and emergency requirements of the Agency.

The TSS position has inherent in it a by-pass or avoidance of the Agency's administrative procedures. The final level of Research and Development in TSS would be established, in effect, not by PRC and DCI review or by the DD/P but rather by the availability of savings from other offices.

TSS now has more than six years experience in the administration of a large-scale Research and Development program, and exceptions permitted in earlier years should no longer be condoned. We believe that TSS should submit for review a program complete as to its requirements, as do other offices. Having received an approval on the basis of the true facts, it should be expected to make a sincere effort to live within the approved amount. At least three other offices have large cost-plus-fixed-fee contracts. Each of them submits a program in its full amount and administers its program in a manner which can be expected to provide compliance with the program approval and resulting allotment limitations. We see no reason for exceptions in the case of TSS.

E. E. SAUNDERS
Controller

Attachments

BD/COMP/CIM/RLW/RWL/yvs (17 August 1959)

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